IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 995 OF 1998

WITH

CIVIL APPLICATION NO. 411 OF 2005

Bank of India ..Appellants

versus

Rajaram S. Suryavanshi & Ors. ..Respondents

Mr. C.R. Dalvi for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST FEBRUARY,2005

ORAL ORDER :

1. The Civil application is for restoration of the appeal dismissed in default by me on 24.1.2005. Nobody was present for the respondents at that time, therefore no notice of restoration is necessary. There is sufficient cause for non appearance. Appeal is restored to file. Civil application disposed of accordingly.

2. So far as Appeal is concerned, the respondents have been served. Nobody is present for them. Mr. Dalvi, counsel for the appellants raised

only one point and that is that when the court passed a decree in favour of the appellants, the Court granted interest only on the amount of Rs.1,99,000/- treating it as a principal amount of advance of loan. He contended that when the claim of the claimants is for Rs.5,40,516.31 paise, interest on that amount should have been granted. He relied upon the Judgment of the Full Bench of the Supreme Court reported in **AIR 2001 Supreme Court 3095 Central Bank of India vs. Ravindra** wherein term "the principal sum adjudged" has been interpreted to include the amount of interest, charged on periodical rests, and capitalised with the principal sum actually advanced, so as to become an amalgam of principal in such cases where it is permissible as per contract between parties or an established Bank practise. The principal sum so adjudged, shall be treated as "principal sum" within meaning of Section 34 on which the interest pendente lite and future interest may be awarded. This Judgment is followed in 2002 (4) Mh. L. J. 826 Shiv Builders, Nagpur and others vs. State Bank of Inida.

3. In view of this judgment, the prayer for modification of the judgment and decree will have to be allowed.

4. Regarding the rate of interest the trial court has awarded 12% on the principal amount of Rs.1,99,000/- so far as future interest is concerned it will be have to be fixed at 9%. In view of the above, I pass the following order:

ORDER

. Appeal is partly allowed.

. Judgment and decree is modified. The Respondents - original Defendants will be liable jointly and severally to pay amount of Rs.5,40,516.31 paise with future interest at the rate of 9% per annum from the date of the suit till realisation.

. Rest of the order of the trial court to remain the same.

. Appeal disposed of accordingly. Since the respondents are absent, there is no order as to costs.

1.02.2005 (D.G. DESHPANDE, J.)